

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHNNY CYRUS,	:	No. 4:06-CV-2022
	:	
Plaintiff,	:	(Judge McClure)
	:	
v.	:	(Magistrate Judge Blewitt)
	:	
KAREN F. HOGSTEN, et al.,	:	
	:	
Defendants.	:	

**O R D E R**

July 25, 2007

**BACKGROUND:**

Plaintiff is a former inmate at the Federal Correctional Institution at Allenwood, White Deer, Pennsylvania (“FCI-Allenwood”).<sup>1</sup> On October 16, 2006, plaintiff filed pro se this instant civil rights action, alleging First Amendment retaliation claims and Eighth Amendment cruel and unusual punishment claims against several defendants.

This matter was initially referred to United States Magistrate Judge Thomas M. Blewitt.

On December 15, 2006, after the plaintiff was permitted to file an amended

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<sup>1</sup> He is currently incarcerated at the Federal Correctional Institution at Butner, North Carolina.

complaint, the magistrate judge issued a thorough eighteen-page report and recommendation addressing plaintiff's various claims. The magistrate judge recommended that the matter continue against only four defendants - Arnold, Eichensehr, Powanda, and Roces. On January 16, 2007, we adopted the magistrate judge's recommendation.

On May 10, 2007, the remaining defendants filed a motion for summary judgment requesting this matter be dismissed in its entirety. The plaintiff failed to file a response, despite being specifically ordered to do so by the magistrate judge. On July 2, 2007, the magistrate judge issued another report and recommendation, which recommended that the court grant defendants' summary judgment motion because the plaintiff failed to exhaust his administrative remedies with respect to the remaining claims, and also because he has failed to prosecute this matter or comply with an order of court.

Plaintiff has not filed any objections to this report and recommendation.

## **DISCUSSION:**

A district court reviews de novo those portions of a magistrate judge's report and recommendation to which a party objects. L.R. 72.3. The court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." Id.

We will adopt the magistrate judge's report and recommendation in full. We agree that plaintiff has failed to exhaust his administrative remedies with respect to the remaining claims against Arnold, Eichensehr, Powanda, and Roces. We also note that F.R.C.P. 41(b) permits dismissal of plaintiff's action because he failed to prosecute this matter and comply with an order of court when failing to respond to defendants' motion for summary judgment. In fact, we consider this matter to have been abandoned by plaintiff.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The court adopts in full United States Magistrate Judge Thomas M. Blewitt's report and recommendation. (Rec. Doc. No. 30.)
2. Plaintiff's claims against remaining defendants Arnold, Eichensehr, Powanda, and Roces are dismissed for failure to exhaust administrative remedies and for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).
3. The clerk is directed to close the case file.
4. Any appeal of this order is not taken in good faith.

s/ James F. McClure, Jr.  
James F. McClure, Jr.  
United States District Judge

